

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ACCOUNTANCY

In the Matter of Joel Leslie Wells, CPA;
CPA Certificate and CPA Sole Proprietor
Firm Permit No. 17858

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on June 21, 2010, at 1:30 p.m. at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

Gregory P. Huwe, Assistant Attorney General, appeared on behalf of the Complaint Investigation Committee of the Minnesota Board of Accountancy ("Board"). There was no appearance by or on behalf of the Respondent, Joel Leslie Wells, CPA. By letters dated June 21 and 22, 2010, counsel for the Board made a motion that the Respondent be found in default and the allegations in the Notice and Order for Hearing and Prehearing Conference be taken as true. The record remained open for receipt of a response to the motion from the Respondent. No response was received, and the record closed on July 12, 2010.

STATEMENT OF THE ISSUES

The following issues are presented in this case:

1. Whether Respondent violated a statute or rule the Board is empowered to enforce, in violation of Minn. Stat. §326A.08, subd. 5(a)(1);
2. Whether Respondent engaged in conduct or acts that are fraudulent, deceptive, or dishonest, in violation of Minn. Stat. §326A.08, subd. 5(a)(2);
3. Whether Respondent failed to file a renewal of his certificate and permit with the Board, in violation of Minn. Stat. § 326A.08 and Minn. R. 1105.7800 D;
4. Whether Respondent's firm provided attest services or assumed or used the title "Certified Public Accountants," the abbreviation "CPA," or any other title, designation, words, letters, abbreviation, sign card, or device tending to indicate that the firm is a CPA firm, in violation of Minn. Stat. § 326A.10(d);
5. Whether Respondent committed acts discreditable to the profession, in violation of Minn. R. 1105.7800; and

6. Whether Respondent's conduct constitutes grounds justifying the Board to take disciplinary action against him.

Based upon all of the files, records, and proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 6, 2010, the Notice and Order for Hearing and Prehearing Conference (Notice and Order for Hearing) in this matter was mailed to the Respondent via certified mail and first class mail at his last known address on file with the Board of Accountancy.¹ The envelope was returned to counsel for the Board unclaimed. The Board has been unable to locate the Respondent or find an alternative home or business address.²

2. The Notice and Order for Hearing indicated that a Prehearing Conference would be held in this matter on June 21, 2010.³

3. The Notice and Order for Hearing in this matter included the following notice:

Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

If any party has good cause for requesting a delay of the prehearing conference or hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference or hearing. A copy of the request must be served on the other party.⁴

4. No one appeared at the June 21, 2010, prehearing conference on behalf of the Respondent. No request was made for a continuance, nor was any communication received by the undersigned from the Respondent.

5. The Notice and Order for Hearing alleges that:

(a) On July 29, 1996, the Board issued Respondent a CPA certificate. On December 31, 2009, the certificate expired.

¹ See Affidavit of Service by U.S. Mail of C.O. Ransom (May 6, 2010), attached to Notice and Order for Hearing.

² See Letter to Administrative Law Judge from counsel for the Board (June 21, 2010).

³ Notice and Order for Hearing at 1.

⁴ Notice and Order for Hearing at 2 (emphasis in original).

- (b) On December 31, 1998, the Board issued Respondent a CPA Sole Proprietor Firm Permit. That permit expired on December 31, 2009.
- (c) Respondent's firm continued to offer and/or provide accounting services while Respondent was not performing services for the firm.
- (d) Respondent accepted a \$650 fee from a client and agreed to complete and file quarterly filings for 2009 federal, state, and unemployment insurance taxes, but failed to perform those services for the client.
- (e) By engaging in the above conduct, the Board alleges that the Respondent has violated Minn. Stat. §§ 326A.08 and 326.10(d), and Minn. R. 1105.7800

6. Because the Respondent is in default in this matter, the allegations contained in the Notice and Order for Hearing are deemed proven.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Board of Accountancy have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 326A.02 and 326A.08 (2008).

2. The Board provided the Respondent with notice of the charges against him and of the time and place of the prehearing conference by mailing the Notice and Order for Hearing to him at his last known address on file with the Board. This matter is, therefore, properly before the Board and the Administrative Law Judge.

3. Respondent is in default as a result of his failure to appear at the scheduled prehearing conference without the Administrative Law Judge's prior consent.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the Notice and Order for Hearing, Respondent violated a statute or rule the Board is empowered to enforce, in violation of Minn. Stat. §326A.08, subd. 5(a)(1).

6. Based upon the facts set forth in the Notice and Order for Hearing, Respondent engaged in conduct or acts that are fraudulent or deceptive, in violation of Minn. Stat. §326A.08, subd. 5(a)(2).

7. Based upon the facts set forth in the Notice and Order for Hearing, Respondent failed to file a renewal of his certificate and permit with the Board, in violation of Minn. Stat. § 326A.08 and Minn. R. 7800 D.

8. Based upon the facts set forth in the Notice and Order for Hearing, Respondent's firm provided attest services or assumed or used the title "Certified Public Accountants," the abbreviation "CPA," or other titles, designations, words, letters, abbreviations, sign, card, or devices tending to indicate that the firm is a CPA firm, in violation of Minn. Stat. § 326A.10(d).

9. Based upon the facts set forth in the Notice and Order for Hearing, the Respondent committed acts discreditable to the profession, in violation of Minn. R. 1105.7800 A and D.

10. Minn. Stat. §§ 326A.02 and 326A.08 empowers the Board to take disciplinary action against the Respondent based upon the above violations.

11. The imposition of a disciplinary action against Respondent is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that disciplinary action be taken against Joel Leslie Wells.

Dated: July 21, 2010

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. This Report is a recommendation, not a final decision. The Minnesota State Board of Accountancy will make the final decision after reviewing the hearing record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota Statutes, Section 14.61, the Board may not make its final decision until after the parties have had access to this Report for at least ten days. During that time, the Board must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument. Parties should contact Doreen Frost, Executive Director of the Minnesota Board of Accountancy, 125 Golden Rule Building,

85 East 7th Place, St. Paul, Minnesota 55101 (Telephone: 651-296-7938), to ascertain the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.